

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Restated Revocable Living Trust of ROSALIE  
V. DUCHER.

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CAPUCHIN SOUP KITCHEN, a/k/a PROVINCE  
OF ST. JOSEPH OF THE CAPUCHIN ORDER,

UNPUBLISHED  
September 20, 2005

Petitioner-Appellant,

v

No. 254145  
Oakland County Probate Court  
LC No. 03-290354-TV

MONICA CAUCHI, Personal Representative,  
MARION B. DUCHER, STANLEY E. DUCHER,  
LYNDA R. HILTZ, DERI LYNN DUCHER, a/k/a  
DERI LYNN SHOWERS, TERRANCE HILTZ,  
REVA KUHL, ADELE SAFFADY, WANDA  
RUDNICKI, and LARRY EDDY,

Respondents-Appellees.

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Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Petitioner, Capuchin Soup Kitchen, a/k/a Province of St. Joseph of the Capuchin Order, appeals as of right the probate court order denying its petition to vacate and set aside a prior probate court order affirming a settlement agreement. We reverse.

This dispute concerns the “Restated Revocable Living Trust of Rosalie V. Ducher [the decedent],” which was executed in November 2000 and twice amended during February 2002. The trust provides that petitioner will receive twenty percent of the residuary trust property upon the decedent’s death. The decedent died in July 2002. In September 2002, the decedent’s surviving children,<sup>1</sup> for whom the trust and its amendments contained no provisions, filed objections regarding the validity of the trust. Respondent Monica Cauchi, as successor trustee

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<sup>1</sup> Respondents Marion B. Ducher, Stanley E. Ducher, and Lynda R. Hiltz, are the decedent’s surviving children. We shall refer to them collectively as “the decedent’s surviving children.”

and personal representative of the decedent's estate, negotiated a settlement with the decedent's surviving children and all other trust beneficiaries except petitioner.<sup>2</sup> This settlement agreement provided that the decedent's surviving children would receive from the trust certain items from the decedent's household, one-half of the decedent's Hummel figurine collection, and \$70,000.

Petitioner argues that the probate court erred when it denied its petition to vacate and set aside the October 8, 2003, order affirming the settlement agreement. Petitioner specifically contends the settlement agreement violated MCL 700.7207(1) because it was not signed by petitioner. Generally, approval of a proposed compromise is within the probate court's discretion, and its decision will not be disturbed absent a clear abuse of discretion. *In Re Merry*, 174 Mich App 627, 633; 436 NW2d 421 (1989). We review de novo questions of law, including the interpretation and application of a statute, *Jones v Dep't of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003), questions involving the construction of an unambiguous contract, *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 57; 698 NW2d 900 (2005), and the language used in wills and trusts, *In re Estate of Bem*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

A trustee has the power "to collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust" if done in the trust beneficiaries' best interest. MCL 700.7401(2)(dd). However, a proposed compromise must be approved by a probate court, and such approval is within the probate court's discretion.<sup>3</sup> *In Re Merry, supra* at 632-633. Furthermore, MCL 700.7207(1) provides:

On petition of an interested person, the court may approve an interpretation, construction, modification, or other settlement that is agreed upon in writing by all presently identified and competent beneficiaries whose interests in the trust may be affected to resolve a contest, controversy, or question of construction or interpretation concerning the existence, administration, or termination of an irrevocable trust.

Respondents' argument that MCL 700.7207 does not apply is misplaced. We give undefined statutory terms their plain and ordinary meanings, and it is appropriate to consult dictionary definitions to obtain meanings of undefined terms. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). *Random House Webster's College Dictionary* (1997), defines the term "modify" as "to change somewhat the form or qualities of; alter partially; amend[.]" By its own terms, the settlement agreement changes, alters, or amends the distribution

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<sup>2</sup> Respondents sent notices of the settlement agreement to the Attorney General, who did not participate in the proceedings and denies representing petitioner. Respondents did not send notices of the settlement agreement to petitioner.

<sup>3</sup> We are not persuaded by respondents' attempts to liken the settlement agreement to the payment of routine expenses—which would not require the approval of beneficiaries whose interests may be affected—because the settlement agreement was prepared with the express purpose of resolving a controversy. See MCL 7207(1).

of the trust assets. Furthermore, MCL 700.7207 also applies to “other settlements.” Thus, the settlement agreement constitutes a modification or other settlement of the trust.

Because the \$70,000 and other items are to be taken out of the trust before distribution of any assets other than the home, the agreement affects all parties who have a residuary interest in the trust. Petitioner has a twenty percent residuary interest in the trust, and thus, the settlement agreement reduces its interest by \$14,000. It is undisputed that petitioner did not sign or consent to the settlement agreement. Moreover, the settlement agreement states that operation of the settlement agreement “is contingent upon execution of this document by the parties named below. The Agreement shall be deemed operative as soon as all named parties have affixed their signature hereon.” Therefore, pursuant to the terms of the settlement agreement and MCL 700.7207, the probate court abused its discretion when it entered the order affirming the settlement agreement, and thus, erred when it entered an order denying petitioner’s petition to vacate the October 8, 2003, order affirming the settlement agreement.

Petitioner also requests sanctions against respondents pursuant to MCR 2.114, MCR 2.625(A)(2), and MCL 600.2591, asserting that their opposition to its petition to vacate and set aside the probate court’s prior order were frivolous. However, the record reveals that petitioner never properly moved for sanctions and the probate court did not award them sua sponte. Thus, this issue is unpreserved, and we decline to review it. See *Trost v Buckstop Lure Co*, 249 Mich App 580, 590 n 3; 644 NW2d 54 (2002).

Given our resolution of the first issue, we need not address petitioner’s remaining issues on appeal.

We reverse the probate court’s January 14, 2004, order denying petitioner’s petition to vacate, and we vacate and set aside the portion of the probate court’s October 8, 2003, order that approved and adopted the settlement agreement.

/s/ Joel P. Hoekstra  
/s/ Hilda R. Gage  
/s/ Kurtis T. Wilder